

DIVISION OF ENERGY RESOURCES

**BACKGROUND DOCUMENT
ON THE PROPOSED REGULATION FOR THE
RENEWABLE ENERGY PORTFOLIO STANDARD
225 CMR 14.00**

**REGULATORY AUTHORITY
M.G.L. c. 25A, §11F**

October 3, 2001

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION
DIVISION OF ENERGY RESOURCES

NOTICE OF PUBLIC HEARING ON PROPOSED REGULATION

Notice is hereby given pursuant to Massachusetts General Laws (M.G.L.) c. 30A, §2, that the Office of Consumer Affairs and Business Regulation, Division of Energy Resources (DOER) will hold a public hearing to receive oral and written testimony on a proposed new regulation entitled:

Renewable Energy Portfolio Standard (225 CMR 14.00)

The regulation is proposed pursuant to the authority granted by M.G.L. c.25A, §6,11F. The proposed regulation will implement the statutory mandate in M.G.L. c. 25A, §11F that requires all retail electricity suppliers selling electricity to end-use customers in the Commonwealth to obtain specific minimum percentages of their electricity supply from new renewable energy generation sources according to a prescribed schedule.

Interested persons may appear at public hearings to be held:

- **In Springfield, Massachusetts - October 25, 2001, 10:00 a.m. - 1:00 p.m.**
Court Room 305, 3rd Floor, Office of the Governor, 436 Dwight Street
- **In Boston, Massachusetts - October 26, 2001, from 10:00 a.m. - 1:00 p.m.**
Minihan Hall, 6th Floor, Hurley Building, 19 Staniford Street

Written comments should be submitted to Robert Sydney, General Counsel, Division of Energy Resources, 70 Franklin Street, Seventh Floor, Boston, Massachusetts 02110. The deadline for the submission of written comments is 5 p.m., Friday, November 2, 2001. Parties wishing to speak at the public hearing may also provide a written copy or summary of their statement at the hearing.

The draft regulations can be downloaded from the DOER web site, **www.state.ma.us/doer/rps**. Anyone with questions about the hearing should contact Andrea Hattan at 617-727-4732, extension 123, or Matt Morais at 617-727-4732, extension 132.

October 3, 2001
Date

Robert Sydney
Robert Sydney
DOER General Counsel

**BACKGROUND DOCUMENT
ON THE PROPOSED REGULATION FOR THE
RENEWABLE ENERGY PORTFOLIO STANDARD
225 CMR 14.00**

TABLE OF CONTENTS

SECTION	PAGE
A. INTRODUCTION.....	1
B. POLICY OBJECTIVES.....	1
C. REGULATORY DEVELOPMENT PROCESS.....	2
D. SUMMARY OF PROPOSED REGULATION.....	2
E. COST ANALYSIS.....	3
F. POLICY ISSUES.....	3
SUMMARY OF REQUESTS FOR COMMENT.....	9

INTRODUCTION

The Massachusetts Division of Energy Resources (the Division) seeks public comment on draft regulation 225 CMR 14.00, the Renewable Energy Portfolio Standard. The Renewable Energy Portfolio Standard (RPS) is a new regulatory program developed by the Division pursuant to the 1997 Electric Utility Industry Restructuring Act (Act)¹. Specifically, M.G.L. c. 25A, sec. 11F (added by the Act) requires all retail electricity suppliers to purchase a minimum percentage of their electricity supplies from qualified new renewable generation units fueled by one of several renewable fuels.

Beginning in 2003, each supplier must obtain at least 1% of its supply from qualified new renewable generation units. Each year thereafter, the standard increases by one-half percent (0.5%) each year through 2009 when it reaches 4% of each supplier's sales in that year. After 2009, the standard may increase by 1% per year until the Division modifies or suspends it.

The Division has completed the regulatory development process for the proposed RPS and has begun the public review process. The regulations will become effective upon completion of the public review process and review by the legislature as required by M.G.L. c. 25A, sec. 12.

This Background Document provides information on the purpose of various elements of the draft regulations and issues on which the Division particularly seeks public comment. The Background Document is not a source of legal authority. M.G.L. c. 25A, sec. 11F and the regulations (once enacted) constitute the legal authority for the RPS Program.

B. POLICY OBJECTIVES

The RPS is expected to stimulate development of new electric generating units that use renewable fuels and technologies, and thereby accomplish the following policy objectives:

- Decrease pollution from existing power plants,
- Diversify the fuels used to generate power in or near our region,
- Decrease our reliance on fuels imported from other regions, and
- Moderate price volatility caused by reliance on imported fuels.

¹ The Electric Industry Restructuring Act (Chapter 164 of the Acts of 1997) was enacted by the legislature to implement the restructuring of the electric industry in Massachusetts. Section 50 of the Restructuring Act amended M.G.L. c 25A (DOER's implementing legislation) by adding Sec. 11F. Specifically, 11F(a) directs DOER to establish an RPS, and states that the RPS is to be applicable to all retail electricity suppliers (RES) selling electricity to end use customers in the Commonwealth. Section 11F(b) lists the types of renewable energy technologies/energy sources that may be used to demonstrate compliance with the RPS.

C. REGULATORY DEVELOPMENT PROCESS

The Division organized an advisory group consisting of representatives from industry, government, environmental organizations and consumer interest groups. The advisory group met with DOER officials on several occasions between October 1999 and December 2000. Participants in the advisory group provided comments on the substantive and procedural aspects of the proposed RPS. While the advisory group reached consensus on many of the issues integral to the RPS, the draft regulation contains provisions that address several policy issues for which there may not be consensus and on which the Division now requests specific comment.

D. SUMMARY OF PROPOSED REGULATIONS

The proposed regulations establish how generation units become eligible to participate in the RPS Program, define which retail electricity suppliers must comply with RPS and describe how they can comply.

Which generation units qualify as “renewable” and “new”? The Act specifies the fuels and technologies that qualify as “renewable” for purposes of RPS: these include “biomass” (such as wood), gas produced by composting landfills, wind, solar photovoltaic or thermal electric, ocean thermal, wave and tidal energy, and fuel cells utilizing renewable fuels. To qualify as “new” units, the Act specifies that they must commence commercial operation after December of 1997. The regulations restate and in some places clarify these definitions. The regulations do not restrict where the eligible units can be located. Plants can be located anywhere in New England, states outside the region and Canada.

Which “retail suppliers” must comply with RPS? The Act places the responsibility for compliance on the retail electricity suppliers who sell electricity to end use customers. The regulations define “retail electricity suppliers” as including all competitive suppliers and all electric distribution companies that provide Standard Offer and Default Service. Municipal utilities are exempt unless they open their service territory to retail competition.

How “retail electricity suppliers” may comply: The regulations require “retail electricity suppliers” to report annually to the Division. To demonstrate compliance they must first show that each retail electricity product they sold in the preceding year included the minimum RPS requirement. Suppliers may demonstrate compliance in various ways: with renewable attributes through contracts with renewable generators, through ownership of certificates sold by these generators, or by making a contribution to the Massachusetts Technology Park Corporation (MTPC). They must also report on the amount of “existing” (i.e. pre-December 1997) renewable energy generation sources used in each of their retail electricity products, if any.

E. COST ANALYSIS

The Division conducted extensive research and economic modeling to forecast the costs of RPS implementation and found that the cost impact on ratepayers is likely to be very small. The study's conservative scenario resulted in an overall predicted impact on a retail customer's bill of about 0.2% in 2003 rising to about 0.8% in 2009. Thus, for a typical residential monthly bill of \$60, this would translate into an increase of about \$0.15 in 2003 rising to about \$0.60 in 2009. The final Cost Analysis report is available on the Division's Web site at www.state.ma.us/doer/rps.

In addition, the Division recognizes it is important that the regulations include a mechanism to protect consumers from price spikes, which could result from unanticipated circumstances. Therefore the proposed regulations include an Alternative Compliance mechanism² which has the effect of setting a cap on the cost of RPS compliance. The Division defines the worst-case scenario as a situation where all retail suppliers elect to make Alternative Compliance Payments for 100% of their compliance obligation. Under the worst-case scenario the increase to a typical residential consumer's \$60 monthly bill would be about \$.25 in 2003 rising to about \$1.00 in 2009.

F. POLICY ISSUES

The Division provides analysis of RPS policy issues on our web site www.state.ma.us/doer/rps. This documentation includes ten policy white papers, the cost analysis and conceptual designs for the regulations. Several of the issues discussed in those papers are referenced below. The Division seeks public comment on how those issues are addressed in the RPS regulations.

F-1 Biomass Eligibility

The Act specifies that only "low emission, advanced biomass power conversion technologies, such as gasification..." that use biomass fuel qualify as new renewable generation units. The proposed regulation explicitly includes biomass gasification technologies as eligible. However, older biomass burning technologies such as pile burn or stoker combustion are neither advanced nor low emission and are categorically excluded. Generation units using technologies that are neither explicitly included or excluded, such as "fluidized bed" combustion will require a statement of qualification based on a case-by-case review by the Division. Any such review will provide an opportunity for public comment.

Comment Requested: The Division seeks comment on Section 14.07 (2) (e) - the proposal to require a case-by-case review with public comment for units using biomass technologies which are neither categorically included or excluded under Sections 14.06 (1) (b) (vi) (2).

² Section 14.08 (2) (d)

F-2 Imports

Section 11F of M.G.L. c. 25A is silent with respect to geographic location as a qualification for eligibility as a new renewable generation unit. After reviewing the issue, the Division has determined that it does not have the authority to restrict eligibility based on geographic location. Given the physical and administrative integration within the New England region bulk power control area, the proposed regulation places no locational restrictions on generation units located within New England. The proposed regulation will allow generation units located in other control areas to qualify for RPS when power they produce is sold into the New England control area. This is done by means of an external transaction Unit Contract for Energy 1 or Energy 2, as defined by NEPOOL Market Rules and Procedures Section 12.2.1(a).

Comment Requested: The Division seeks comment on Section 14.06 (5) - the proposal to use NEPOOL Market Rules and Procedures Section 12.2.1(a) as a requirement for eligibility for qualified new renewable generation units located outside of New England.

F-3 Compliance Documentation

Retail suppliers will file annual reports with the Division, which will document compliance with the RPS standard. The proposed regulation does not specify what documentation will be required for retail electricity suppliers to demonstrate compliance. The Division plans to develop compliance reporting procedures in guidelines to be published after promulgation of this regulation. The Division expects to allow compliance to be demonstrated in several ways:

- presentation of contracts with renewable generators accompanied by reliable documentation that these attributes have not been counted toward any other RPS or green marketing program,
- ownership of NE-GIS certificates from qualified new renewable generation units (see subsection F-4 below), or
- contributions to Massachusetts Technology Park Corporation (see subsection F-8 below).

Comment Requested: The Division seeks comment on the proposal to allow several options to demonstrate compliance.

F-4 Renewable Energy Credit

Section 332 of the Act, directs the Division to study the option of creating a Massachusetts tradable renewable energy credit and to make a recommendation to the legislature. The Division has completed its study. A summary and full report are available on the web at www.state.ma.us/doer/rps. The study examined three options for documenting compliance with RPS.

- Contract Documentation

Each retail electricity supplier would provide the Division with receipts and/or contracts that demonstrate their purchase of energy with qualifying “new renewable” attributes, along with confirmation that these were not resold to any other party. Due to the complexity of electricity contracting, the Division anticipates that using this approach will be cumbersome and costly.

- A Massachusetts Renewable Energy Credit (MA-REC)

A MA-REC would be tradable credit system created by the Division for the sole purpose of supporting the Massachusetts RPS. Because of the integrated nature of New England electricity grid and the existence of overlapping but not identical renewables requirements in CT and ME, the Division’s analysis showed that a MA-REC would not be effective. It would be very difficult to implement, would create a very small market with limited liquidity and would not be particularly effective in addressing issues of double counting attributes.

- A New England-wide system for tracking all non-electricity and price attributes

The New England Generation Information System (NE-GIS) now being developed by NEPOOL and the New England ISO is such a system. The NE-GIS will be a comprehensive accounting system for all generation attributes: fuel type, air emissions, use of union labor and others. The system will enable retail electricity suppliers to easily comply with various regulatory requirements across all the New England states. Such requirements would include RPS requirements in Massachusetts and other states (such as Connecticut and Maine), consumer disclosure regulations in several states and emission performance standards in Massachusetts (and possibly other states).

Based on the conceptual design for the NE-GIS, the Division has determined that the benefits of such a system far exceed those which could be achieved through the creation of a Massachusetts Renewable Energy Credit. Therefore, the Division has recommended to the legislature that RPS implementation not include the creation of a MA-REC.

Comment Requested: The Division seeks comment on the decision to recommend that RPS implementation not include the creation of a MA-REC.

F-5 Product Compliance

The Division seeks to spread the burden of compliance equitably among all end-use electricity customers subject to the RPS. This goal is best achieved if RPS applies to each retail electricity product offered for sale. Without this requirement, retail sellers could assign all their RPS requirements to one more expensive product and exclude it from other less expensive products. The Division’s approach is also consistent with regulations on product labeling enforced by the Massachusetts Department of Telecommunications and Energy³ and consumer protection regulations on truth in advertising enforced by the Massachusetts Attorney General.⁴

³ 220 CMR 11.06(6)

⁴ 940 CMR 19.00

Comment Requested: The Division seeks comment on Section 14.08 (1) - the proposal to require compliance with the RPS standards for each retail electricity product.

F-6 Early Compliance

During the stakeholder process, many participants encouraged the Division to promote development of new renewable electricity generation units prior to the initial compliance year. In considering alternatives, the Division weighed the potential benefits of an early compliance scheme against both increased complexity and compatibility with other public policies such as electricity product labeling. The proposed regulations strike a balance by providing an opportunity for retail energy suppliers to procure and apply RPS attributes of electricity generated in 2002 toward their 2003 compliance requirement.

Comment Requested: The Division seeks comment on Section 14.08 (2)(b) - the early compliance provision that allows retail energy suppliers to apply RPS attributes of electricity generated in 2002 toward their 2003 compliance requirement.

F-7 Banked Compliance

During the stakeholder process, participants encouraged the Division to consider compliance strategies that would facilitate long-term contracting for RPS Attributes. This should encourage development of new, renewable electricity generation plants. As with considering alternative early compliance strategies, the Division weighed the potential benefits of banked compliance against increased complexity and compatibility with other public policies such as electricity product labeling.

The proposed regulations include a provision to allow a retail electricity supplier to apply an excess of RPS Attributes to their future year compliance requirement under the following conditions:

1. In a year when a retail electricity supplier wishes to bank excess RPS attributes, it can only bank 30% of the total obligation.
2. The banked RPS attributes must be used toward compliance within two years, and
3. The banked RPS attributes can only be used for compliance by the retail electricity supplier that banked them.

Comment Requested: The Division seeks comment on Section 14.08 (2)(c) - the proposal to allow “banked “ compliance and particularly the three conditions limiting its use.

F-8 Alternative Compliance

During the stakeholder process, participants expressed concerns regarding the potential costs of RPS to Massachusetts’s ratepayers. While the Division’s detailed cost analysis addressed most

concerns regarding the premium that may theoretically be required to support development of new renewable generation units to meet the RPS demand, legitimate concerns about market power abuse in secondary market trading of renewable attributes remained.

The proposed regulations include an Alternative Compliance provision whereby a retail electricity supplier can discharge part or its entire compliance obligation by making an Alternative Compliance Payment to the Massachusetts Technology Park Corporation (MPTC).⁵ The Alternative Compliance Payment rate will be set at \$50/mwh in 2003 and will be adjusted annually by the Consumer Price Index.

The Alternative Compliance Payment funds will be managed and expended consistent with the following principles:

- There will be separate accounting for RPS Alternative Compliance Payments by MPTC;
- Division and MPTC will have joint responsibility for authorizing expenditure of any funds received;
- Priority for expenditure of any funds received will be to:
 1. purchase and retire currently available RPS attributes certificates, and, if funds still remain,
 2. investment in construction of new renewable generation units.

Comment Requested: (a) The Division seeks comment on Section 14.08 (2)(d) - the proposal to allow alternative compliance through contributions to the MTPC.

Comment Requested: (b) The Division seeks comment on the proposal relating to expenditure of alternative compliance payment funds.

F-9 "Existing" Renewable Requirement

The Act does not set any specific standards for "existing" renewable sources. It does direct the Division to determine the baseline for existing renewable sources serving Massachusetts consumers. While there is broad consensus among stakeholders that the Act gives the Division the authority to set a minimum standard for existing renewable sources, there is disagreement about whether it should bother to do so. Some stakeholders argue that setting minimum percentages for use of existing renewable sources would help protect those resources from competition that might otherwise drive them out of business. Others argue that such minimum requirements for use of existing renewable sources would provide no material benefit to those sources because they have been shown to be competitive and do not need protection. Further, they argue that requiring each retail supplier to demonstrate use of minimum percentages of existing renewable sources in their products will impose a significant administrative burden on them while producing little or no added renewable generation.

After extensive analysis, the Division estimates that the supply of existing renewable sources in New England (about 13 percent of annual supply) will far exceed the amount needed to maintain 1997 levels in Massachusetts through at least 2015 (even while supplying the requirements of

⁵ Established by M.G.L. c. 40J.

RPS programs in other states, such as Maine and Connecticut). Therefore, the draft regulations do not impose minimum use requirements at this time.

The proposed regulations would require that the Division identify those generation units that use a “renewable fuel, energy resource or technology” as defined in 225 CMR 14.03. Further, retail electricity suppliers would be required to report annually to the Division on the contribution of “renewable fuel, energy resource or technology” generation units to the retail electricity products they sell to Massachusetts’s customers.

Comment Requested: (a) The Division seeks comment on Section 14.09 (3) (b) - the proposal to require retail electricity suppliers to report annually on the contribution of existing renewable sources to the portfolios of the retail electricity products sold to Massachusetts customers.

Comment Requested: (b) The Division seeks comment on the Division’s plan not to set minimum standards for the use of existing renewable sources in retail electricity products sold to Massachusetts customers.

SUMMARY OF REQUESTS FOR COMMENT

F-1: The Division seeks comment on Section 14.07 (2) (e) - the proposal to require a case-by-case review with public comment for units using biomass technologies which are neither categorically included or excluded under Sections 14.06 (1) (b) (vi) (2).

F-2: The Division seeks comment on Section 14.06 (5) - the proposal to use NEPOOL Market Rules and Procedures Section 12.2.1(a) as a requirement for eligibility for qualified generation units located outside of New England.

F-3 The Division seeks comment on the proposal to allow several options to demonstrate compliance.

F-4: The Division seeks comment on the decision to recommend that RPS implementation not include the creation of a MA-REC.

F-5: The Division seeks comment on Section 14.08 (1) - the proposal to require compliance with the RPS standards for each retail electricity product.

F-6: The Division seeks comment on Section 14.08 (2)(b) - the early compliance provision that allows retail energy suppliers to apply RPS attributes of electricity generated in 2002 toward their 2003 compliance requirement.

F-7: The Division seeks comment on Section 14.08 (2)(c) - the proposal to allow “banked” compliance and particularly the three conditions limiting its use.

F-8: (a) The Division seeks comment on Section 14.08 (2)(d) - the proposal to allow alternative compliance through contributions to the MPTC.

(b) The Division seeks comment on the proposal related to expenditure of alternative compliance payment funds.

F-9: (a) The Division seeks comment on Section 14.09 (3) (b) - the proposal to require retail electricity suppliers to report annually on the contribution of existing renewable sources to the portfolios of the retail electricity products sold to Massachusetts customers.

(b) The Division seeks comment on the Division’s plan not to set minimum standards for the use of existing renewable sources in retail electricity products sold to Massachusetts customers.

T:/Renewable/RPS/Reg Package/Final Package/Background.doc